

REMARKS

Entry of this Amendment and reconsideration of the subject application in view thereof are respectfully requested.

I. Claim Status

Claims 7-21 have been rejected. Claims 7 and 14 are amended to incorporate and clarify the limitations of claim 8, and claim 8 is cancelled. Claims 7 and 9-21 are pending in the application. No new matter is added.

II. Response to Non-Final Office Action of November 5, 2009

Applicant respectfully submits that the claim rejections made in the Final Office Action of November 5, 2009 (herein referred to as "the Office Action" or "this Office Action" or "the present Office Action") have been either overcome or rendered moot in view of amendments to the claims herein and the following discussion.

A. Rejection of Claims under 35 U.S.C. § 103

Claims 7-21 are rejected under 35 U.S.C. 103(a) as follows:

- (1) claims 7 and 11 are rejected as being unpatentable over Schmied (US 3,269,079) in view of Jones (US 5,682,758) and in further view of Wild (US 6,364,090);
- (2) claims 8 and 12 are rejected as being unpatentable over Schmied, Jones, and Wild (as applied to claim 7) and further in view of McElvy (5,563,862);
- (3) claims 9, 10, and 13 are rejected as being unpatentable over Schmied and Jones (as applied to claim 7) and further in view of Tramposch (US 6,131,368); and
- (4) claims 14-21 are rejected as being unpatentable over Schmied and Jones (as applied to claim 7) and further in view of Tramposch.

Applicant respectfully traverses the above rejections and submits that the Examiner has not established a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. MPEP §2142; *Velander v. Garner*, 348 F.3d 1359, 1363 (Fed. Cir. 2003). The factors of *Graham v. John Deere Co. of Kansas City*,

383 U.S. 1 (1966), control an obviousness inquiry. Those factors are: 1) "the scope and content of the prior art"; 2) the "differences between the prior art and the claims"; 3) "the level of ordinary skill in the pertinent art"; and 4) objective evidence of nonobviousness. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007) (quoting *Graham*, 383 U.S. at 17-18). "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). A prior art reference teaches away when "a person of ordinary skill in the art, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994); *Cf. Baxter International, Inc. v. McGraw, Inc.*, 149 F.3d 1321 (Fed. Cir. 1998).

As stated above, independent claim 7 has incorporated and clarified the limitations of claim 8. Claim 8 was rejected as being unpatentable over Schmied, Jones, and Wild (as applied to claim 7) and further in view of McElvy. The cited references, however, do not disclose the following limitation of amended independent claim 7:

a pinching device having a bulged upper portion and a recessed lower portion for pressing an upper part of the storage bag where the granular object is not contained and a lower part of the storage bag where the granular object is settled, before the storage bag is sealed, so as to keep inner surfaces of the upper part without the granular object settled at the bottom of the storage bag into close contact with each other and to keep the granular object from moving when the storage bag sealed by the sealing device is cooled by the cooling device.

The Examiner concedes that the primary reference, Schmied, does not disclose the claimed pinching device. (Current Office Action at 3.) Further, Jones and Wild are unrelated to a pinching device for sealing and removing air from a package. Rather, these references disclose a method for cooling asphalt and an apparatus for handling bags on a conveyor, respectively. Therefore, Jones and Wild fail to remedy the deficiencies in Schmied.

With regard to McElvy, the Examiner contends that McElvy's stripper jaws 40, 40a disclose the pinching device of the present invention. Specifically, the Examiner contends that McElvy's stripper jaws 40 "engage a package 'P' prior to sealing for the purpose of removing the air from a

package (see figures 1-6 and col. 7, lines 3-14). (Current Office Action at 3.) Applicant respectfully disagrees.

First, McElvy's stripper jaws 40, 40a do not disclose the structure of the pinching device specified in amended claim 7—namely, "a bulged upper portion and a recessed lower portion." Further, McElvy's stripper jaws 40, 40a cannot seal the granular object as stated in claim 7 to eliminate all air from package P, and the Examiner's citations to McElvy do not indicate otherwise.

McElvy's stripper jaws 40, 40a are formed to let out the air in the package P when the sealing jaws 50, 50a are closed. The stripper jaws 40, 40a rotate around the stub shafts 42. The tips of the stripper jaws 40, 40a are in contact with each other in the state of Fig. 7. After beginning the rotating of the stripper jaws 40, 40a, the tips of the stripper jaws 40, 40a should be away from each other, particularly in the state of Figs. 8 and 9. Thus, it impossible for McElvy's disclosure to expel the air in the package P completely by the movement of the stripper jaws 40, 40a. It is obvious from the disclosure—particularly, Figs. 3 to 6—that air remains in the package P.

For these reasons, McElvy also fails to remedy the deficiencies in Schmied. Thus, the cited references alone or in combination fail to render the claimed invention obvious because these references do not teach or suggest, for example:

a pinching device having a bulged upper portion and a recessed lower portion for pressing an upper part of the storage bag where the granular object is not contained and a lower part of the storage bag where the granular object is settled, before the storage bag is sealed, so as to keep inner surfaces of the upper part without the granular object settled at the bottom of the storage bag into close contact with each other and to keep the granular object from moving when the storage bag sealed by the sealing device is cooled by the cooling device.

In view of the foregoing, Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness of claim 7 under 35 U.S.C. § 103(a). Even if *prima facie* obviousness has been established, which it has not, it is urged that the cited art nonetheless fails to render the present invention obvious under a proper § 103 analysis. Each of the dependent claims require the limitations of claim 7 and, at least for these reasons, the dependent claims also patentably define themselves over the cited references. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

III. Conclusion

Applicant believes this response to be a full and complete response to the Office Action. Accordingly, favorable reconsideration in view of this response and allowance of all of the pending claims are earnestly solicited.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

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Respectfully submitted,

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